



UNITED STATES DEPARTMENT OF COMMERCE  
Patent and Trademark Office

NOTICE OF ALLOWANCE AND ISSUE FEE DUE

QM22/1002

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SUITE 400  
SAN FRANCISCO CA 94111-4156

APPLICATION NO.	FILING DATE	TOTAL CLAIMS	EXAMINER AND GROUP ART UNIT	DATE MAILED
09/473,173	12/28/99	031	REIP, D	3731 10/02/00
First Named Applicant	ZUCHERMAN,	35 USC 154(b) term ext. =		0 Days.

TITLE OF INVENTION SPINE DISTRACTION IMPLANT

ATTY'S DOCKET NO.	CLASS-SUBCLASS	BATCH NO.	APPLN. TYPE	SMALL ENTITY	FEE DUE	DATE DUE
3	KLYC1000-CIP	606-061.000	T14	UTILITY	YES \$620.00	01/02/01

**THE APPLICATION IDENTIFIED ABOVE HAS BEEN EXAMINED AND IS ALLOWED FOR ISSUANCE AS A PATENT. PROSECUTION ON THE MERITS IS CLOSED.**

**THE ISSUE FEE MUST BE PAID WITHIN THREE MONTHS FROM THE MAILING DATE OF THIS NOTICE OR THIS APPLICATION SHALL BE REGARDED AS ABANDONED. THIS STATUTORY PERIOD CANNOT BE EXTENDED.**

**HOW TO RESPOND TO THIS NOTICE:**

**I. Review the SMALL ENTITY status shown above.**

If the SMALL ENTITY is shown as YES, verify your current SMALL ENTITY status:

- A. If the status is changed, pay twice the amount of the FEE DUE shown above and notify the Patent and Trademark Office of the change in status, or
- B. If the status is the same, pay the FEE DUE shown above.

If the SMALL ENTITY is shown as NO:

- A. Pay FEE DUE shown above, or
- B. File verified statement of Small Entity Status before, or with, payment of 1/2 the FEE DUE shown above.

**II. Part B-Issue Fee Transmittal should be completed and returned to the Patent and Trademark Office (PTO) with your ISSUE FEE. Even if the ISSUE FEE has already been paid by charge to deposit account, Part B Issue Fee Transmittal should be completed and returned. If you are charging the ISSUE FEE to your deposit account, section "4b" of Part B-Issue Fee Transmittal should be completed and an extra copy of the form should be submitted.**

**III. All communications regarding this application must give application number and batch number. Please direct all communications prior to issuance to Box ISSUE FEE unless advised to the contrary.**

**IMPORTANT REMINDER: Utility patents issuing on applications filed on or after Dec. 12, 1980 may require payment of maintenance fees. It is patentee's responsibility to ensure timely payment of maintenance fees when due.**

PATENT AND TRADEMARK OFFICE COPY

# Notice of Allowability

Application No.  
09/473,173

Applicant(s)

Zucherman et al.

Examiner

David O. Reip

Group Art Unit

3731



All claims being allowable, PROSECUTION ON THE MERITS IS (OR REMAINS) CLOSED in this application. If not included herewith (or previously mailed), a Notice of Allowance and Issue Fee Due or other appropriate communication will be mailed in due course.

☐ This communication is responsive to \_\_\_\_\_.

☒ The allowed claim(s) is/are 1, 2, 4-10, 12-22, 31-39, 50, and 51.

☐ The drawings filed on \_\_\_\_\_ are acceptable.

☐ Acknowledgement is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d).

☐ All ☐ Some\* ☐ None of the CERTIFIED copies of the priority documents have been  
☐ received.

☐ received in Application No. (Series Code/Serial Number) \_\_\_\_\_.

☐ received in this national stage application from the International Bureau (PCT Rule 17.2(a)).

\*Certified copies not received: \_\_\_\_\_.

☐ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. § 119(e).

A SHORTENED STATUTORY PERIOD FOR RESPONSE to comply with the requirements noted below is set to EXPIRE THREE MONTHS FROM THE "DATE MAILED" of this Office action. Failure to timely comply will result in ABANDONMENT of this application. Extensions of time may be obtained under the provisions of 37 CFR 1.136(a).

☐ Note the attached EXAMINER'S AMENDMENT or NOTICE OF INFORMAL APPLICATION, PTO-152, which discloses that the oath or declaration is deficient. A SUBSTITUTE OATH OR DECLARATION IS REQUIRED.

☒ Applicant MUST submit NEW FORMAL DRAWINGS

☐ because the originally filed drawings were declared by applicant to be informal.

☒ including changes required by the Notice of Draftsperson's Patent Drawing Review, PTO-948, attached hereto or to Paper No. \_\_\_\_\_.

☐ including changes required by the proposed drawing correction filed on \_\_\_\_\_, which has been approved by the examiner.

☐ including changes required by the attached Examiner's Amendment/Comment.

Identifying indicia such as the application number (see 37 CFR 1.84(c)) should be written on the reverse side of the drawings. The drawings should be filed as a separate paper with a transmittal letter addressed to the Official Draftsperson.

☐ Note the attached Examiner's comment regarding REQUIREMENT FOR THE DEPOSIT OF BIOLOGICAL MATERIAL.

Any response to this letter should include, in the upper right hand corner, the APPLICATION NUMBER (SERIES CODE/SERIAL NUMBER). If applicant has received a Notice of Allowance and Issue Fee Due, the ISSUE BATCH NUMBER and DATE of the NOTICE OF ALLOWANCE should also be included.

## Attachment(s)

☐ Notice of References Cited, PTO-892

☒ Information Disclosure Statement(s), PTO-1449, Paper No(s). \_\_\_\_\_

☒ Notice of Draftsperson's Patent Drawing Review, PTO-948

☐ Notice of Informal Patent Application, PTO-152

☐ Interview Summary, PTO-413

☒ Examiner's Amendment/Comment

☐ Examiner's Comment Regarding Requirement for Deposit of Biological Material

☒ Examiner's Statement of Reasons for Allowance

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### EXAMINER'S AMENDMENT

1. An examiner's amendment to the record appears below. Should the changes and/or additions be unacceptable to applicant, an amendment may be filed as provided by 37 CFR 1.312. To ensure consideration of such an amendment, it MUST be submitted no later than the payment of the issue fee.

Authorization for this examiner's amendment was given in a telephone interview with Mr. Sheldon Meyers on 9/28/00 .

2. The application has been amended as follows:

*In the Specification:*

Page 1, under the title "Cross-Reference to Related Applications", the continuing data as presented in the Supplemental Preliminary Amendment filed 3/7/00 (paper #4, amendment C) has been rewritten as follows:

This application is a continuation of U.S. Application No. 09/179,570, filed October 27, 1998, Patent No. 6,048,342, which is a continuation-in-part of U.S. Application No. 09/175,645, filed October 20, 1998, Patent No. 6,068,630, which is a continuation-in-part of U.S. Application No. 08/958,281, filed October 27, 1997, Patent No. 5,860,977, which is a continuation-in-part of U.S. Application No. 08/778,093, filed January 2, 1997, Patent No. 5,836,948.

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In the Claims:

Claims 3, 11, 44, 45, 47-49, and 52 have been canceled.

D 2 18/17 16. (First Amended) The implant of claim 15 wherein said sleeve [adjusting means includes a member which] is positionable relative to said positioning and retaining means.

D 3 19/17 17. (Second Amended) The implant of claim 15 wherein said sleeve [adjusting means includes a member which is positionable relative to said positioning and retaining means; and which member] has a shape which has a preferred orientation with respect to the spinous processes.

D 4 20/17 21. (Second Amended) The implant of claim 15 wherein[:] said sleeve [second means] can move relative to the positioning and retaining means as the implant is inserted between spinous processes from a posterior position to an anterior position closer to vertebral bodies of the spinal column.

3. The following is an examiner's statement of reasons for allowance:

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Claims 1, 2, 4-10, 12-22, 31-39, 50, and 51 have been allowed because the prior art fails to disclose or suggest a spinal implant device having all the limitations as recited in at least the independent claims 1, 15, 18, 31, and 37, including:

with respect to claim 1, a first wing with a central body extending therefrom, with a sleeve positioned over the central body and the sleeve being able to rotate about the longitudinal axis of the central body;

with respect to claim 15, a second means extending substantially perpendicular to the first means and including a sleeve rotatable about an axis;

with respect to claim 18, the second member extending substantially perpendicular to the first member along an axis and the second member is rotatable about the axis; and

with respect to claims 31 and 37, a sleeve over the central body, the sleeve being rotatable about the central body;

Any comments considered necessary by applicant must be submitted no later than the payment of the issue fee and, to avoid processing delays, should preferably accompany the issue fee. Such submissions should be clearly labeled "Comments on Statement of Reasons for Allowance."

4. Any inquiry concerning this communication or earlier communications from the examiner should be directed to David O. Reip at (703) 308-3383. The examiner can normally be reached Mon-Thu and every other Fri from 7:00 AM to 4:30 PM.

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Michael Buiz, can be reached at (703) 308-0871. The fax number for this Unit is (703) 308-2708 (unofficial) or (703) 305-3590 (official).

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the Group receptionist at (703) 308-0858.



David O. Reip  
Assistant Examiner  
September 28, 2000



MICHAEL BUIZ  
SUPERVISORY PATENT EXAMINER  
GROUP 3300

9/29/00

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